

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NOS. 96-093-C AND 96-171-C - ORDER NO. 97-717
AUGUST 19, 1997

IN RE: DOCKET NO. 96-093-C - Application of) ORDER
AT&T Communications of the Southern) MODIFYING
States, Inc. for the Requirement of) ORDER NO. 96-800
Interconnection Agreements.)

AND

DOCKET NO. 96-171-C - Request of)
MCI Telecommunications Corporation)
to require South Carolina Local)
Exchange Companies to Immediately)
File with the Commission and make)
Public all Interconnection)
Agreements with other Carriers.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of the South Carolina Telephone Association (the Association) to modify our Order No. 96-800.

The Federal Communications Commission (FCC) promulgated Rule 51.303, which appeared to require the filing of all LEC-to-LEC agreements, regardless of when they were negotiated.

Various parties sought the filing of all existing agreements involving an incumbent LEC, regardless of when the agreements were negotiated. The Association companies noted that this issue was before the Eighth Circuit Court of Appeals, which was assigned to hear the consolidated appeals of the FCC's First Report and Order.

Based on Rule 51.303 and the FCC's Interpretation of the Federal Act, the Commission ordered that existing LEC-to-LEC agreements be filed according to the following schedule:

(1) Class A carrier to Class A carrier agreements by June 30, 1997; (2) Class A carrier agreements with small companies by December 31, 1997; and (3) small company to small company agreements by June 30, 1998. Our Order No. 96-800 expressly noted that this was required by the FCC in its First Report and Order and that the Order was being challenged in Court. We felt constrained to "follow the law as it presently is, not as it might be in the future," but we expressly cautioned that "should the FCC Order concerning the filing of interconnection agreements be modified, we may review this decision." Order No. 96-800 at 4.

On July 18, 1997, the United States Court of Appeals for the Eighth Circuit issued its opinion in Iowa Utilities Board v. Federal Communications Commission, Case No. 96-3321 and consolidated cases. The Court vacated FCC Rule 51.303 and its accompanying policy statements on the ground that the FCC did not have jurisdiction to issue Rule 51.303. The Court held that section 2 (b) of the Communications Act of 1934, 47 USC Section 152(b)(1994), "prevents the FCC from issuing regulations involving telecommunications matters that are fundamentally intrastate in character."

Accordingly, SCTA has requested that this Commission review our Order 96-800 in light of the Court's decision vacating FCC Rule 51.303 and its accompanying policy statements, which,

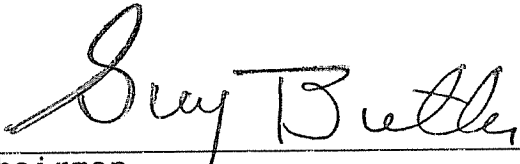
according to SCTA, affirms our authority to determine which preexisting agreements should be filed. SCTA has further requested that the Commission find that the filing of preexisting agreements between LECs, which predominantly involve Extended Area Service (EAS) arrangements, would not be in the public interest. In addition, SCTA asks that we modify Order No. 96-800 so as not to require the filing of any agreements that were negotiated prior to February 8, 1996, between Class A carriers and small companies or between small companies and other small companies. Also, according to SCTA, with respect to Class A carrier to Class A carrier agreements, such agreements have already been renegotiated and filed with the Commission and any argument with respect to those agreements is now moot.

We have examined the authorities as cited by SCTA, and have examined SCTA's requests in light of them. We conclude that we agree with SCTA's reasoning. We believe that we now have authority to make determinations as to what agreements should be filed. Further, we agree that the filing of preexisting agreements between LEC's is not in the public interest, since these predominantly involve EAS arrangements, which are specialized contracts to meet the special needs of a particular area. Further, we hereby modify PSC Order No. 96-800 so as not to require the filing of any agreements that were negotiated prior to February 8, 1996, the effective date of the Telecommunications Act of 1996, between Class A carriers and small companies or between small companies and other small companies. Such agreements that

predate the Telecommunications Act are simply irrelevant to today's telecommunications environment. In addition, we agree that, with respect to Class A carrier to Class A carrier agreements, such agreements have already been renegotiated and filed with the Commission, and any argument with respect to those agreements is now moot.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)